

Town of Byron Local Law #3 of 2020:
A Local Law to Repeal and Replace Section 11.15 of the Zoning Law of the Town
of Byron Relating to Solar Energy Systems

Be it enacted by the Town Board of the Town of Byron, New York as follows:

ARTICLE I. ENACTMENT AND INTENT

Section 1.01. Authority.

This local law is authorized by, and adopted pursuant to, New York Town Law §§ 261- 263, New York State Municipal Home Rule Law § 10(ii)(a)(12), the Statute of Local Governments, the laws of the Town of Byron, Article IX, §§ 1(a) and 2(c) of the New York State Constitution, and the general police powers vested with the Town of Byron to enact zoning regulations and to promote the health, safety and welfare of all residents and property owners in the Town.

Section 1.02. Statement of Purpose and Legislative Intent.

- 1.02.1 In light of recent changes in New York State energy policy, the creation of the Office or Renewable Energy Siting, and aggressive State targets for new solar power generation and battery energy storage system capacity, the Town of Byron anticipates an increase in proposals for solar energy and battery energy storage facilities of all sizes in the Town. The Town of Byron desires to amend its zoning code to further align solar energy zoning provisions with the goals and objectives set forth in the January 2019 Town of Byron Comprehensive Plan. The modifications to the law set out herein support state energy policy by promoting appropriate solar development while further protecting existing community character, valuable farmland, and other exceptional local resources. The enactment of this law also evinces the Town's intent for State siting bodies to strictly apply all substantive provisions in the Town Code.
- 1.02.2 This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Byron by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:
 - [a] To support the following vision statement included in the 2019 Town of Byron Comprehensive Plan: The Town of Byron should seek to preserve its rural nature and agricultural base. There is room and a need for limited residential, industrial and commercial development, but the current character of the community is what has attracted and keeps the residents of the Town here – the character should not be radically altered. Any new development must take place in a very planned, measured, and directed manner.

- [b] To maintain the rural character of the town; and
- [c] To preserve the agricultural base of land and farm operations;
- [d] To encourage a sense of pride in the community and allow local residents, farms, businesses, and government to take advantage of solar energy systems that in some cases may be consistent with the community character of the Town;
- [e] To improve public health;
- [f] To diversify energy resources to decrease dependence on the grid;
- [g] To aid in the energy independence of the community as well as the country;
- [h] To decrease the use of fossil fuels, thereby reducing the carbon footprint of the Town of Byron;
- [i] To avoid, or if avoidance is impossible, mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- [j] To increase employment and business development in the Town of Byron by furthering the installation of appropriately sited Solar Energy Systems;
- [k] To decrease the cost of electricity to the owners of residential and commercial properties, including single-family homes;

ARTICLE II. REPEALING AND REPLACING SECTION 11.15 OF ARTICLE XI OF THE ZONING LAW OF THE TOWN OF BYRON.

Section 2.01: Repeal of Section 11.15 From the Zoning Law of the Town of Byron.

Section 11.15 (“Solar Energy System”), as revised, of Article XI of the Town of Byron Zoning Law of 2013 is hereby deleted and repealed in its entirety.

Section 2.02: Replacement of Section 11.15 in the Zoning Law of the Town of Byron.

In place of the deleted and repealed Section 11.15, as revised, of Article XI of the Town of Bryon Zoning Law of 2013, the Town of Byron Zoning Code is amended to add a new Section 11.15. The new Section 11.15 of Article XI of the Town of Bryon Zoning Code, which fully replaces the deleted and repealed Section, is entitled “Section 11.15 Solar Energy Systems.”

The new Section 11.15 of Article XI of the Town of Byron Zoning Code is amended to add the following:

- 2.02.1 Authority: This section is adopted pursuant to New York Town Law §§ 261- 263, New York State Municipal Home Rule Law § 10(ii)(a)(12), and Article IX, §§ 1(a) and 2(c) of the New York State Constitution.

2.02.2 Statement of Purpose: In light of recent changes in New York State energy policy, the creation of the Office of Renewable Energy Siting, and aggressive State targets for new solar power generation and battery energy storage system capacity, the Town of Byron anticipates an increase in proposals for solar energy and battery energy storage facilities of all sizes in the Town. The Town of Byron desires to amend its zoning code to further align solar energy zoning provisions with the goals and objectives set forth in the January 2019 Town of Byron Comprehensive Plan. The modifications to the law set out herein support state energy policy by promoting appropriate solar development while further protecting existing community character, valuable farmland, and other exceptional local resources. The enactment of this law also evinces the Town's intent for State siting bodies to strictly apply all substantive provisions in the Town Code.

2.02.3 Objectives: This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Byron by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives:

[a] To support the following vision statement included in the 2019 Town of Byron Comprehensive Plan: The Town of Byron should seek to preserve its rural nature and agricultural base. There is room and a need for limited residential, industrial and commercial development, but the current character of the community is what has attracted and keeps the residents of the Town here – the character should not be radically altered. Any new development must take place in a very planned, measured, and directed manner.

[b] To maintain the rural character of the town; and

[c] To preserve the agricultural base of land and farm operations;

[d] To encourage a sense of pride in the community and allow local residents, farms, businesses, and government to take advantage of solar energy systems that in some cases may be consistent with the community character of the Town;

[e] To improve public health

[f] To diversify energy resources to decrease dependence on the grid;

[g] To aid in the energy independence of the community as well as the country;

[h] To decrease the use of fossil fuels, thereby reducing the carbon footprint of the Town of Byron;

[i] To avoid, or if avoidance is impossible, mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;

[j] To increase employment and business development in the Town of Byron by furthering the installation of appropriately sited Solar Energy Systems;

[k] To decrease the cost of electricity to the owners of residential and commercial properties, including single- family homes;

Section 2.03: Definitions.

For the purpose of this section, certain words and terms used herein are defined as follows:

- 2.03.1 Applicant: The individual/individuals or entity/entities that apply for any federal, state or local government permit or permission for installation of a Solar Energy System.
- 2.03.2 Building – Integrated Solar Energy System: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site construction.
- 2.03.3 Farmland of Statewide Importance: Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.
- 2.03.4 Glare: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.
- 2.03.5 Ground-Mounted Solar Energy System: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or off-site consumption.
- 2.03.6 Native Perennial Vegetation: Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.
- 2.03.7 Pollinator: Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.
- 2.03.8 Prime Farmland: Land, designated as “Prime Farmland” in the U.S.

Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

- 2.03.9 Project Site: The physical area needed for a Solar Energy System including any setbacks, buffers, fencing, roads, screening, support facilities, and Solar Energy Equipment.
- 2.03.10 Roof-Mounted Solar Energy System: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or off-site consumption.
- 2.03.11 Solar Access: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.
- 2.03.12 Solar Energy Equipment: Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.
- 2.03.13 Solar Energy System: A system of components intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, Battery Energy Storage Systems, storage, maintenance and/or other accessory buildings, inverters, fans, combiner boxes, meters, transformers, and all other mechanical structures. The term also includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy System as set forth in Sections 2.04 through 2.07.
- 2.03.14 Solar Panel: A photovoltaic device capable of collecting and converting solar energy into electricity.
- 2.03.15 Storage Battery: A device that stores energy and makes it available in an electrical form.

Section 2.04: Tier 1 Solar Energy Systems include the following:

- 2.02.1 Roof-Mounted Solar Energy Systems; and
- 2.02.2 Building-Integrated Solar Energy Systems.

Section 2.05: Tier 2 Solar Energy Systems include the following:

- 2.05.1 Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to 5,000 square feet and that generate up to 110% of the electricity consumed on the site over the previous 12 months.
- 2.05.2 Notwithstanding the above, a solar energy system located on a farm operation, as defined in § 301(11) or the relevant provision of the New York State Agriculture and Markets Law, and located in a New York State Agricultural District, which primarily serves the needs of such farm operation and produces up to 110% of the farm's needs, or other amount that may be established by resolution of the Byron Town Board in accordance with New York State Department of Agriculture and Markets guidance, shall be deemed a Tier 2 solar energy system subject to limitations on farmland conversion contained in Section§ 23216.12 (F) and (G).
- 2.05.3 A system that does not exceed the production or output limits and otherwise conforms to the requirements of this definition shall not be excluded from designation as a Tier 2 solar energy system as a result of selling or otherwise receiving credits or benefits for excess energy provided to the distribution grid.

Section 2.06: Tier 3 Solar Energy Systems

These are systems that are not included in the definition for Tier 1, Tier 2, or Tier 4 Solar Energy Systems. The facility area of Tier 3 Solar Energy Systems shall not exceed 15 acres in size. The facility area shall include the area within all perimeter fencing, and any area used for visual screening vegetation, and any area used for access roads.

Section 2.07: Tier 4 Solar Energy Systems

These include any Solar Energy System greater than 15 acres in size, including the area within all perimeter fencing, and any area used for visual screening vegetation, and any area used for access roads.

Section 2.08: Applicability

Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town of Byron after the effective date of this Local Law, excluding general maintenance and repair.

2.08.1 Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

2.08.2 Any proposed Solar Energy System subject to review by the New York Board on Electric Generation and Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the Executive Law, shall be subject to all substantive provisions of this Section and any other applicable Byron Town Law.

2.08.3 All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”).

Section 2.09 General Requirements:

2.09.1 A Building and Zoning permit shall be required for installation of all Solar Energy Systems.

2.09.2 Issuance of permits and approvals by the Town of Byron Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)].

2.09.3 Unless preempted or waived by a body of competent jurisdiction, the procedural and substantive components of this law shall apply regardless of any contract, easement, or license that may exist between the Applicant and any other landowner in the Town.

Section 2.10. Permitting Requirements for Tier 1 Solar Energy Systems

2.10.1 All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

2.10.2 Roof-Mounted Solar Energy Systems shall incorporate, the following design requirements:

[a] Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface and the highest edge of the system.

[b] Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached. (c) Solar Panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.

[c] Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

[d] Glare: All Solar Panels shall have anti-reflective coating(s).

[e] Height: All Roof-Mounted Solar Energy Systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.

[f] Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

Section 2.11 Permitting Requirements for Tier 2 Solar Energy Systems

2.11.1 All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall require a site plan review under the local zoning code or other land use regulations, subject to the following conditions:

2.11.2 Glare: All Solar Panels shall have anti-reflective coating(s).

2.11.3 Setbacks: Tier 2 Solar Energy Systems shall be subject to the setback regulations specified for the accessory structures within the underlying zoning district. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards in residential districts.

2.11.4 Height: Tier 2 Solar Energy Systems shall be subject to the height limitations specified for accessory structures within the underlying zoning district.

2.11.5 Screening and Visibility:

[a] All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties.

[b] Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

2.11.6 Lot Size: Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

Section 2.12 Permitting requirements for Tier 3 and Tier 4 Solar Energy Systems

2.12.1 All Tier 3 and Tier 4 Solar Energy Systems are permitted within

- Agricultural (A), Agricultural Residential (A-R), Commercial (C-1, C-2), and Industrial (I) districts with a Special Use Permit and Site Plan Review approved by the Planning Board, and subject to site plan application requirements set forth in Section 3.03 and 3.05 (Town of Byron Zoning Law).
- 2.12.2 Applications for the installation of Tier 3 and Tier 4 Solar Energy System shall be reviewed by the Zoning Enforcement Officer for completeness.
- 2.12.3 Underground Requirements. All on-site utility lines shall be placed underground, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way. Electric lines shall be buried no deeper than 24 inches to avoid mixing topsoil and subsoil.
- 2.12.4 Roads and Berms.
- [a] Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction. Topsoil in the same location as roads shall be stripped and stockpiled, and gravel roads shall be constructed over woven geotextile.
- [b] Stripped Top Soil. All Stripped Top Soil shall be stockpiled in berms at or near the perimeter of the area from which it was removed to construct a berm seeded and planted in conformity with the requirements of Section I(ii)e(vi) of this Law and the requirements of the Environmental Conservation Law to reduce the visual impact of the solar panel law.
- 2.12.5 Signage.
- [a] No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.
- [b] As required by National Electric Code (NEC), disconnect and other emergency shut-off information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- 2.12.6 Glare. All Solar Panels shall have anti-reflective coating(s).
- 2.12.7 Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- 2.12.8 Tree-cutting. Removal of existing trees larger than 6 inches in diameter is prohibited.
- 2.12.9 Decommissioning. Solar Energy Systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the owner and/or operator's expense, which at the owner's option may come from any security made with

the Town of Byron as set forth in Section 3(I) herein.

[a] A decommissioning plan (see Appendix 2) signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

- i. The cost of removing the Solar Energy System.
- ii. The time required to decommission and remove the Solar Energy System and any ancillary structures.
- iii. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

2.12.10 Security.

[a] The deposit, executions, or filing with the Town Clerk of cash, line of credit (LOC), or other form of security reasonably acceptable to the Town of Byron attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the LOC or security shall be 110% of the cost of removal of the Tier 3 or Tier 4 Solar Energy System and restoration of the property with an escalator of 3% or increase in the Consumer Price Index by the U.S. Bureau of Labor and Statistics annually for the life of the Solar Energy System.

[b] In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, LOC, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, LOC, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

[c] In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in Section j) (i) and j) (ii) herein.

Notwithstanding the forgoing, any Tier 3 or 4 solar energy system and any associated battery energy storage systems sited pursuant to Article 10 of the Public Service Law or Article 94-c of the Executive Law shall be required to obtain a letter of credit or fund an escrow in an amount satisfactory to the Town of Byron, to ensure the removal of the systems, their components, and associated structures, fixtures, equipment, fencing, or other improvements, and the remediation of the site. The amount of the letter of credit shall not be reduced by the salvage value of facility components.

2.12.11 Site plan application. For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- [a] Property lines and physical features, including roads, for the project site.
- [b] Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or

structures.

[c] A three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnects and over current devices.

[d] A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

[e] Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

[f] Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.

[g] Zoning district designation for the parcel(s) of land comprising the project site.

[h] Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

[i] Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

[j] Prior to the issuance of the Special Use Permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

2.12.12 Special Use Permit Standards and substantive standards for Tier 3 and Tier 4 Solar Energy Systems are as follows.

[a] Lot size: The property on which the Tier 3 and Tier 4 Solar Energy System is placed shall meet the lot size requirements in Appendix 1.

[b] Setbacks: The Tier 3 and Tier 4 Solar Energy Systems shall meet the setback requirements in Appendix 1.

[c] Height: The Tier 3 and Tier 4 Solar Energy Systems shall comply with the height limitations in Appendix 1.

[d] Lot coverage: The following components of a Tier 3 and Tier 4 Solar Energy System shall be considered included in the calculations for lot coverage requirements:

- i. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
- ii. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.
- iii. Access roads servicing the Solar Energy System.

Lot coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirement of the underlying zoning district.

[e] Fencing Requirements are as follows:

- i. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.
- ii. Chain-link fencing surround Tier 4 Solar Energy Systems shall be visually screened. Other types of fencing surrounding Tier 4 Solar Energy Systems may require visual screening at the discretion of the planning board.
- iii. Chain-link fencing surrounding Tier 3 Solar Energy Systems shall be visually screened at the discretion of the planning board.

[f] Screening and Visibility.

- i. Solar Energy Systems smaller than 10 acres shall have views minimized from adjacent properties using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
- ii. Solar Energy Systems larger than 10 acres shall be required to conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital view shed report, may be required to be submitted by the applicant.
- iii. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized from public roadways and adjacent properties.
- iv. The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to

screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one (1) evergreen tree, at least 6 feet high at time of planting, spaced 10-15 feet apart along the entire length of the screening, plus two (2) supplemental shrubs spaced appropriately within the gaps between evergreens along the entire length of the screening. The Town of Byron Planning Board will provide a list of suitable species.

v. The applicant shall be responsible for maintaining, preserving, and repairing visual screening until decommissioning of any solar energy system is complete.

[g] Agricultural Resources. For projects located on agricultural lands:

i. Tier 3 and Tier 4 Solar Energy Systems on Prime Farmland or Farmland of Statewide Importance shall be required to seed 75% of the total surface area of all solar panels on the lot with native perennial vegetation where appropriate.

ii. Tier 3 and Tier 4 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the requirements of the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Solar Energy Projects.

iii. Tier 3 and Tier 4 Solar Energy System owners shall develop, implement, and maintain native vegetation pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. When establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

iv. Tier 4 Solar Energy Systems shall not result in conversion of more than 10% of all prime farmland in the Town of Byron. Converted farmland includes both prime farmland inside any perimeter fencing associated with Tier 4 facilities, and any adjacent prime farmland that is no longer suitable for farming as a result of the Tier 4 facility. Prime farmland means prime farmland as defined by the United States Department of Agriculture, New York State, or the Natural Resources Conservation Service. A farmland “conversion” is defined by Section 301(8) of the Agricultural and Markets Law.

[h] Ownership Changes: If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the

ownership change.

- i. Lighting and Security Cameras:
- ii. All flood lights and other lighting devices designed and installed to protect the security of the Solar Energy System and the area in its vicinity shall be so designed, installed and maintained to eliminate any glare or intrusion of any direct light into any residential building or any agricultural building housing livestock.
- iii. No cameras or other photographic device installed on or about the area of the Solar Energy System shall be designed, installed and maintained to be capable of photographing any activity taking place outside the said area and the adjoining property more than 50 feet outside the fence installed pursuant to this law.

Section 2.13 Safety

- 2.13.1 Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.
- 2.13.2 Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department.
- 2.13.3 If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town of Byron and any applicable federal, state, or county laws or regulations.
- 2.13.4 Electromagnetic fields: No Tier 3 or Tier 4 Solar Energy System shall exceed 1 mg of electromagnetic emissions from any cable, wire conduits conveying electrical energy in or about the Solar Energy System.

Section 2.14 Permit Time Frame and Abandonment

- 2.14.1 The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 12 months, provided that a building permit is issued for construction or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 12 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- 2.14.2 Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the

owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 1 year of notification.

- 2.14.3 If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Byron may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Section 2.15 Inspections

- 2.15.1 The Zoning Enforcement Officer or his or her duly authorized and appointed deputies or assistants or authorized agents shall have the authority to cause any plans, structures, lots or system components to be inspected, examined or reviewed for any Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy Systems to determine whether or not they are in conformity with the provisions of this law.
- 2.15.2 The Zoning Enforcement Officer's duties and authority granted under Article III of the Town of Byron Code shall be applicable to Solar Energy Systems except where expressly preempted herein by a provision specific to Solar Energy Systems.
- 2.15.3 Inspection fees: The owner and/or operator shall permit the Zoning Enforcement Officer, at least annually and upon any written request by him or her to inspect any part of the Solar Energy System or its area to determine compliance with this law. The owner and/or operator shall pay an annual fee of Four Hundred Dollars (\$400.00) to defray the expense incurred by the Town in conducting the said inspection or inspections.

Section 2.16 Enforcement

[a] Penalties: Any violation of this Solar Energy Law, or any section, subsection, paragraph, sentence, clause, provision, or phrase hereof, shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Byron.

[b] Costs: The owner and /or operator shall be responsible to pay any and all costs, including reasonable attorney fees incurred by the Town in the enforcement of this Law.

ARTICLE III. SAVINGS, SEVERABILITY, AND EFFECTIVE DATE.

Section 3.01. Savings.

The amendment by this law of Section 11.15 of Article XI of the Code of the Town of Byron shall not affect or impair any permit issued or approved or the conditions thereof, or any offense committed or obligation, liability, order, penalty, forfeiture or

punishment incurred or imposed, prior to the time of such amendment, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent and in the same manner as if such chapter or provision has not been amended, except that any structure or lot, or use or development of land within the Town of Byron that was lawful immediately prior to the enactment of this local law but that does not conform to the specifications of Section 11.15 of Article XI of the Code of the Town of Byron as enacted and amended by this local law, shall be deemed nonconforming as of the effective date of this law, and subject thereby to all provisions applicable to a nonconforming lot, structure, use, or development.

Section 3.02. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase hereof, as declared by the valid judgment of any court of competent jurisdiction for any reason, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect. Any judgment by a court of competent jurisdiction declaring any section, subsection, paragraph, sentence, clause, provision, or phrase hereof to be invalid shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded

Section 3.03. Effective Date

This law shall be effective immediately upon filing with the Secretary of State.

(f) Appendix 1 – Tier 3 and Tier 4 Solar Energy Systems Lot Size, Setback, and Height Requirements

ZONING DISTRICT	TIER 3 and TIER 4 SOLAR ENERGY SYSTEM ACCESSORY USE	MINIMUM LOT SIZE	MINIMUM SETBACK FROM PROPERTY LINE (i), (ii), (iv) (FEET)			MAXIMUM HEIGHT (FEET)(iii)
			FRONT	SIDE	REAR	
A AGRICULTURAL	PERMITTED WITH SPECIAL USE PERMIT AND SITE PLAN	≥ 5 ACRES	200'	200'	200'	15'
A-R AGRICULTURAL RESIDENTIAL	PERMITTED WITH SPECIAL USE PERMIT AND SITE PLAN	≥ 5 ACRES	200'	200'	200'	15'
R-1 RESIDENTIAL	NOT PERMITTED	NA	NA	NA	NA	NA
C-1 COMMERCIAL	PERMITTED WITH SPECIAL USE PERMIT AND SITE PLAN	≥ 2 ACRES	100'	50'	50'	20'
C-2 COMMERCIAL	PERMITTED WITH SPECIAL USE PERMIT AND SITE PLAN	≥ 2 ACRES	100'	50'	50'	20'
I-1 INDUSTRIAL	PERMITTED WITH SPECIAL USE PERMIT AND SITE PLAN	≥ 5 ACRES	100'	50'	50'	20'
L-C LAND CONSERVATION	NOT PERMITTED	NA	NA	NA	NA	NA

Fencing, access roads, and landscaping may occur within the setback.

(2) All setback distances from an owner-occupied or tenant-occupied dwelling shall be increased to 500 feet. Setback distances shall be measured from the front, rear, or side lines of the building/structure to the base of the fence surrounding the Tier 3 and Tier 4 Solar Energy Systems. All measurements shall be made at right angles from the building/structure lines to the base of the fence.

(3) Height will be measured from the highest natural grade below each solar panel.

(4) All setbacks from Land conservation Zoning District boundaries shall be 200 feet.

Appendix 2 – Sample Decommissioning Plan

Date: [Date]

Decommissioning Plan for [Solar Project Name], located
at: [Solar Project Address] Prepared and Submitted by
[Solar Developer Name], the owner of [Solar Farm
Name]

As required by the Town of Byron, [Solar Developer Name]
presents this decommissioning plan for [Solar Project Name] (the
“Facility”).

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends.
2. The system does not produce power for 12 months.
3. The system is damaged and will not be repaired or replaced.

The owner of the Facility, as provided for in its lease with the landowner,
shall restore the property to its condition as it existed before the Facility was
installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete,
conduits, structures, fencing, and foundations to a depth of 36
inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the
Facility in accordance with local, state and federal waste
disposal regulations.
3. Removal of all graveled areas and access roads unless
the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within 12 months
of the Facility ceasing to produce power for sale. The owner of the
Facility, currently [Solar Developer Name], is responsible for this
decommissioning.

Facility Owner Signature:

Date: